

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2212.05
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: February 4, 2005
DATE OF REPORT: March 1, 2005
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: May 6, 2005

COMPLAINT ISSUES:

Whether the Indianapolis Public Schools violated:

511 IAC 7-29-6 by failing to conduct a case conference committee meeting within 10 instructional days after the date on which the public agency decides to take action that involves removing a student with a disability from the student's current placement for a behavior described in 511 IAC 7-29-3(a) or 4(b).

511 IAC 7-27-4(a)(2) by failing to convene a case conference committee meeting within 12 months of the preceding case conference committee meeting for a student previously determined eligible for special education to determine whether the annual goals for the student are being achieved.

511 IAC 7-27-2 by failing to send to the parent(s) written notice of the case conference committee meeting.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically failing to:

- (a) inform the student's parent(s) of the student's progress; and
- (b) provide the student with the required accommodations.

During the course of this complaint investigation three additional issues were identified:

511 IAC 7-29-1 by failing to follow procedures when a student with a disability has been suspended for more than 10 cumulative instructional days in the same school year.

511 IAC 7-27-3(a)(4) by failing to ensure that the case conference committee participants include the student's parent.

511 IAC 7-27-4(c) by failing to utilize the case conference committee to develop, review, or revise an IEP for a student who is eligible for special education and related services.

FINDINGS OF FACT:

1. The Student has been identified as having a learning disability and determined eligible for special education and related services.
2. Beginning on August 23, 2004, up to the day this complaint was filed, the Student had received 25 days of out-of-school suspension. The School acknowledges that once the Student had been suspended for

more than 10 cumulative instructional days it failed to provide services to enable the Student to progress appropriately in the general curriculum and to advance appropriately toward the goals set out in the Student's individualized education program (IEP). In addition, the School acknowledges that it failed to conduct a case conference committee (CCC) meeting within 10 instructional days after the date on which the School had suspended the Student in a series of suspensions cumulating to more than 10 instructional days for periods as long as five consecutive days (November 3 through 5, and 8, and 9, 2004) with as little as two days in between the next period of suspensions (November 12, and 15 through 18, 2004). Altogether, the Student was suspended eight times between August 2004, and January 2005, for periods between two to five days per suspension. The School also did not develop a plan to assess the Student's functional behavior in order to develop a behavioral intervention plan.

3. The Student's IEP dated December 14, 2004, indicates that the Student's IEP was last updated on November 12, 2003. The Student's CCC did not convene until January 14, 2005, despite the IEP being dated December 14, 2004, (the IEP dated December 14, 2004, is really the IEP from November 12, 2003).
4. The Student's CCC convened on January 14, 2005, in order to complete the annual case review. The Student's parent did not participate in the CCC meeting. The School has failed to provide documentation indicating whether the parent was notified of this CCC meeting. The CCC on January 14, decided to reconvene on January 21, to further complete the Student's annual case review in addition to discussing the Student's behavior and conducting a manifestation determination. At the CCC meeting on January 21, the CCC participants were informed that the IEP had been sent home earlier in the week and signed by the parent. The parent also did not attend this CCC meeting. The IEP indicates that the parent signed agreement with the IEP on January 20, 2005. Again, there is no documentation to indicate whether the parent was invited or notified about the CCC meeting held on January 21. The CCC agreed to reconvene in two weeks to review a behavior plan for the Student with input from a behavior specialist.
5. The School acknowledges that the Student's progress reports were not sent home to the Student's parent at the appropriate nine-week grading period during the first semester in the fall. The School failed to provide documentation to indicate whether progress reports were completed per the IEP. The IEP states that reporting of student progress will be at regular report card periods and will include copies of goal(s) and objectives with progress noted.
6. The Complainant alleges that the Student's accommodations, specifically with regard to subject matter presentation, materials, and assignments, were not being implemented in the Student's "Success For All" reading program. The Complainant asserts that when directly asking the Student's teacher about what accommodations are being implemented, the teacher replied that the reading program was very prescriptive and teachers are not permitted to make changes. The School has failed to provide documentation to specifically answer this allegation.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School failed to conduct a CCC meeting within 10 instructional days after the date on which the School decides to take an action that involves removing a student with a disability from the student's current placement. Specifically, Finding of Fact #2 indicates that the Student had been suspended for 25 cumulative instructional days during the 2004-2005 school year. Pursuant to 511 IAC 7-29-1(j)(2), the suspensions constitute a change of placement because the Student was subjected to a series of suspensions that constitute a pattern because they cumulate to more than 10 instructional days over several periods of suspension. The School acknowledges that it failed to conduct a manifestation determination when required. Finding of Fact #4 indicates that the

CCC eventually convened on January 21, 2005, to conduct a manifestation determination. Therefore, a violation of 511 IAC 7-29-6 is found.

2. Finding of Fact #3 indicates that the School failed to convene a CCC meeting within 12 months of the preceding CCC meeting to determine whether annual goals were being met for the Student. The Student's CCC convened on November 12, 2003, but an annual case review did not take place until January 2005. Therefore, a violation of 511 IAC 7-27-4(a)(2) is found.
3. Finding of Fact #4 indicates that the School failed to send to the parent written notice of the CCC meetings held on January 14, and 21, 2005. Therefore, a violation of 511 IAC 7-27-2 is found.
4. Findings of Fact #5 and #6 indicate that the School failed to implement the Student's IEP as written, specifically with regard to informing the parent of the Student's progress, and the provision of required accommodations. The School acknowledges that it failed to provide progress reports to the Student's parent. The School did not respond to specific allegations related to accommodations to be provided the Student in the Student's reading program. Therefore, a violation of 511 IAC 7-27-7(a) is found.
5. Finding of Fact #2 indicates that the School failed to follow suspension procedures after the Student had been suspended for more than 10 cumulative instructional days. Specifically, the School failed to provide services to enable the Student to progress appropriately in the general curriculum and towards achieving the goals set out in the Student's IEP. In addition, the School failed to develop a plan for assessing the Student's functional behavior. Therefore, a violation of 511 IAC 7-29-1 is found.
6. Finding of Fact #4 indicates that the School failed to utilize the CCC to review and/or revise the Student's IEP. The School met with the Student's parent prior to the scheduled CCC meeting on January 21, 2005, to discuss and review the Student's IEP. The parent signed the IEP on January 20, 2005, but did not attend the CCC convened the next day. Therefore, a violation of 511 IAC 7-27-4(c) is found.
7. Finding of Fact #4 indicates that the School failed to ensure that the parent was included as a participant at the CCC meetings convened on January 14, and 21, 2005. Therefore, a violation of 511 IAC 7-27-3(a)(4) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

Indianapolis Public Schools (IPS) shall:

1. Convene the Student's CCC to develop, review, and revise the Student's IEP. Specifically, the CCC shall complete the Student's behavioral intervention plan. In addition, the CCC shall discuss to what extent the Student's accommodations will be provided in the reading program. Finally, the CCC must determine whether and to what extent the Student shall receive compensatory services due to the Student being precluded from attending school as a result of being repeatedly suspended. A copy of the Case Conference Report and IEP shall be submitted to the Division no later than April 8, 2005.
2. Submit a copy of the written case conference notification form sent to the parent in addition to documentation related to any phone calls or other attempts to schedule the case conference required in Corrective Action #1 (above) with the parent. The School shall also show proof that the parent received the notification. These items shall be submitted to the Division no later than April 8, 2005.

3. Submit to the Division a copy of the Student's progress report due for the nine-week report card period for the second semester (2005). The School shall also provide documentation showing that the parent received a copy of the Student's progress report. These items shall be sent to the Division no later than April 8, 2005.
4. Submit a written memorandum to all IPS School #110 administrators and special education personnel specifically describing how to comply with:
 - (1) 511 IAC 7-29-6;
 - (2) 511 IAC 7-27-4(a)(2);
 - (3) 511 IAC 7-27-2;
 - (4) 511 IAC 7-27-7(a);
 - (5) 511 IAC 7-29-1;
 - (6) 511 IAC 7-27-3(a)(4); and
 - (7) 511 IAC 7-27-4(c).A copy of the memorandum and a list of all school personnel who received it shall be sent to the Division no later than April 8, 2005.
5. Develop written policies and procedures regarding the provision of services meant to help students with disabilities progress in the general curriculum and towards achieving the goals set out in a student's IEP when suspended for more than 10 cumulative instructional days. A copy of the policies and procedures, along with an assurance statement from the school principal that they will be implemented, shall be sent to the Division no later than April 8, 2005.
6. Due to the kinds of procedural deficiencies involved with this complaint as indicated by Conclusions #1 through #7, the IPS central special education staff shall conduct a special education procedures training for all IPS School #110 personnel. The training shall include, but not be limited to, the issues related to this complaint, especially suspension procedures under 511 IAC 7-29-1 and compliance with CCC participants and procedures. Copies of all materials, notes, and handouts related to the training, a copy of the attendance sheet, and any other documentation related to the procedures training shall be submitted to the Division no later than May 6, 2005.